Supreme Court, U.S.
FILED
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NO. 97-489 (3)

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1996

JAMES COLELLI,

Petitioner

vs.

KENNETH A. SANDT, T/A AND D/B/A IST KLAS
MARINA AND CRUISER BOATS, A DIVISION OF
KCS INTERNATIONAL, INC., AND CRUISTAR, INC.

Respondents

WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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I. REASONS FOR ALLOWANCE OF THE WRIT:

A. THE COMPELLING ISSUES PRESENTED IN THE PETITION FALL SQUARELY WITHIN SUPREME COURT RULE 10(A) THEREFORE, REVIEW ON CERTIORARI SHOULD BE GRANTED.

Contrary to the Respondent's argument, the compelling issues raised in the Petition fall within the category described in Supreme Court Rule 10(a) which states that the Supreme Court will consider review where:

> A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.
> (Emphasis added).

It is clear, for the reasons set forth in the Petition that the Third Circuit sanctioned the District Court's continuing divergence from Pennsylvania case law on the issue of successor-in-interest liability when it affirmed Judge Vanaskie's Order of September 19, 1996.

Respondent argues that this Court has a long-standing practice by which it will "not ordinarily review the holding of a Court of Appeals on a matter of state law . . ." Pierson v. Ray, 386 U.S. 547, 558 N.12 (1967). Of course, this Court does not "ordinarily" review many types of cases because review is discretionary. Therefore, each case must be reviewed independently using Supreme Court Rule 10 as a guideline to determine whether compelling reasons exist for review.

Moreover, the footnote cited by the Respondent in Pierson does not suggest that those Petitions that deal with interpretations of state common law are automatically excluded from consideration.

For these reasons, the Court should grant the Petition.

B. CONTRARY TO RESPONDENT'S ASSERTIONS, THE PETITIONER HAS NOT WAIVED ANY ISSUE IN THIS MATTER.

The respondent argues that because the Petitioner did not request a rehearing in banc before the Third Circuit, he has waived his argument.

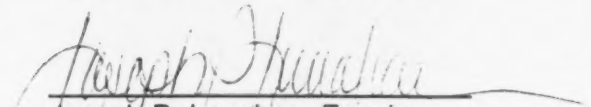
There simply is no merit to the Respondent's argument. There is no procedural requirement that before an appeal is taken to the Supreme Court, a rehearing in banc must be requested otherwise all issues involving holdings of prior panels will be waived. Of course, respondent does not, nor could he, cite any case law in support of this bold assertion.

For these reasons, the Court should grant the Petition.

CONCLUSION:

For these reasons, the Petitioner respectfully requests this Honorable Court to grant his Petition for Certiorari.

LENAHAN & DEMPSEY, P.C.



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	)	**NO. 97-489**
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CERTIFICATE OF SERVICE

This is to certify that today, October 24, 1997, I delivered (mailed) in quantities itemized, copies of the Petitioner's Reply Brief in Opposition in the above-entitled matter to the following counsel of record:

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